WORKINGWOMEN AND THE LAWS: A RECORD OF NEGLECT

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An attempt to show in tabular form how the various states have protected by law the rapidly growing body of working women in this country, illustrates the insufficiency and meagreness of such laws.

Necessarily this compilation omits all reference to statutes gradually secured for the health and safety of working men, and which working women *ipso facto* share. These laws provide for sanitation, ventilation and lighting, for fire-escapes and a noon hour, in some states for the guarding of dangerous machinery, for forced ventilation, payment of wages, reporting of accidents, and other similar measures.

The Census of 1900 showed that, during the preceding decade, young workingwomen increased at a more rapid rate than any other class of workers; that one-half of the 5,000,000 wage-earning women were girls under the age of 25 years; that while the largest percentage of workingmen were adults in the prime of strength between 25 and 34 ye rs of age, the largest percentage of working "women" were between 16 and 21 years of age. No plea can show more clearly than this fact, the urgent need of special legislation in their behalf — young, inexperienced and helpless themselves — to improve their conditions of labor.

The two most important elements in the employment of women with which legislation deals are, 1 Nightwork, 2 The length of the working day.

Nightwork

The dangers of nightwork are twofold, physical and moral. In the deplorable absence of medical records, the effect of occupation, nightwork and overtime upon health cannot be proved by

statistics. But the physical injury is attested by all physicians whose practice brings then into contact with working girls. Anaemia, nervous exhaustion and general susceptibility to disease are not difficult to trace to unrepaired loss of sleep due to night labor. Moreover, ill-health among working girls is more wide spread than is known to physicians and clinics, as the ignorance and fear of these workers keep them from seeking medical assistance as long as possible. The direct effect of nightwork on health may be observed in one occupation where such work is as unavoidable as it is well-arranged, that is hospital nursing. Even in hospitals where night duty is carefully regulated — a period of three months being considered excessive — and where night nurses are required to rest and sleep during the daytime, their standard of health is distinctly below that of the day nurses. Nervous fatigue and susceptibility to disease are admittedly greater. How then can it be otherwise in employments for instance such as binderies, laundries and textile mills, where nightwork is long continued for women whose home conditions make adequate rest by day impossible? The lowered vitality or chronic ill-health which results is a sinister endowment, particularly for the large number of girls who marry after a few years of work.

The *moral* dangers of nightwork are so obvious that they need only be mentioned: the danger of the streets at night, going to and from work; association with all kinds of men employees at late night hours; the difficulty for women who are away from their families, of living at respectable places and entering at night hours; the peril of the midnight recess in establishments that run all night long.

Such being in brief, some physical and moral detriments of nightwork, what has been done by legislation to protect women and young girls?

Only four of the 52 states and territories specifically forbid the employment of women at night. A fifth state (Ohio) prohibits nightwork of girls under 18 years. New Jersey prohibits nightwork in bakeries for girls under 18 years.

Work at Night Prohibited

Between 10 p. m. and 6 a. m., in Indiana, for all women in manufacture.

Between 10 p. m. and 6 a. m., in Massachusetts, for all women in manufacture.

Between 10 p. m. and 6 a. m., in Nebraska, for all women in manufacture and commerce.

Between 9 p. m. and 6 a. m., in New York for all women in manufacture.

Between 10 p. m. and 7 a. m., in New York, for women under 21 years in commerce.

Between 7 p. m. and 6 a. m., in Ohio, for girls under 18 years at any gainful occupation.

Between 7 p. m. and 7 a. m., in New Jersey for girls under 18 years in bakeries.

Work at Night Not Prohibited

Alabama	Louisiana	Oregon
Alaska	Maine	Pennsylvania
Arizona	Maryland	Rhode Island
Arkansas	Michigan	South Carolina
California	Minnesota	South Dakota
Colorado	Mississippi	Tennessee
Connecticut	Missouri	Texas
Delaware	Montana	Utah
District of Columbia	Nevada	Vermont
Florida	New Hampshire	Virginia
Georgia	New Jersey (except in bakeries)	Washington
Hawaii	New Mexico	West Virginia
Idaho	North Carolina	Wisconsin
Illinois	North Dakota	Wyoming
Indian Territory	Ohio (except for girls under 18)	
Iowa	Oklahoma	
Kansas		
Kentucky		

When Childhood Ends

The principle of protecting *children* from nightwork has so far gained ground, that 20 states have forbidden their employment at night, to specified ages. But childhood ends early according to the statutes. In South Carolina, for instance, childhood ends upon the 12th birthday and after that date little girls may

legally be employed every night, from sunset to sunrise, for the rest of their lives, being no longer children in the eyes of the law. That the 12th birthday is actually the time when childhood ends, and that thereafter a little girl is a woman fit to work 12 hours at night, few people would directly affirm. Childhood, taken as the period of physical development, does not end upon the 12th birthday, nor yet upon the 14th. The pressure of industry tends to set as low as possible, in the statutes, the age when childhood nominally ends, in order to make available as early as may be the cheap labor of children at night. This is especially true in states whose industries call for the labor of children, and where public opinion against night work is not yet outspoken. South Carolina protects children at night only to the 12th birthday; Alabama to the 13th; Arkansas, Texas and Virginia to the 14th. Even enlightened Massachusetts still fails to protect from nightwork children over 14 years in certain employments. Other states forbid nightwork in *all* gainful occupations to the 16th birthday, and it is legitimate to presume that this age limit will soon be accepted for all legislation on the work and education of children. But the glaring need of protecting the very young should not be allowed to conceal the no less poignant, if less well recognized need of such legislation for girls *over* 16 years.

Legislation On Nightwork Abroad

In America, then, but four states have laws prohibiting nightwork for women, and such legislation is viewed with general hostility by employers. This fact brings into greater prominence the movement abroad for a total and worldwide prohibition of nightwork for women in industrial establishments. In May, 1905, there met at Berne, Switzerland, representatives of most of the civilized governments, except the United States and Japan, to draw up a definite international agreement prohibiting nightwork for women and establishing a 12-hour period of rest at night. This meeting was called by the Swiss government at the request of the International Association for Labor Legislation, and was composed of representatives sent by the following countries, viz.: Germany, Austria, Hungary, Belgium, Denmark, Spain, France, Great Britain, Italy, Norway, Holland, Portugal, Sweden and Switzerland. Discussion covered the physical and moral need of

such an agreement for the preservation of the race, and the greater efficiency of workingwomen; the industries to be included; the necessary exemptions to be made; the effect on competition for world markets, etc. It was decided to include in the projected agreement all industrial establishments employing more than 10 persons. It was decided further that a specified period of at least 11 consecutive hours for rest at night be provided, beginning not later than 10 p. m. and closing not earlier than 5 a. m. An interval of 3 to 10 years (according to the state of the industries affected) is to be allowed before the international agreement goes into effect; the exemptions such as industries using materials liable to spoil, or "season-trades," are strictly defined; the agreement is to be ratified by the participating governments by December, 1907.

The lasting value of this Conference is explained by the Bulletin of the New York State Department of Labor (Dec. 1905); "As the conference came to a definite agreement on each question, its recommendations are likely to have great influence and may lead to the arrangement of international treaties to carry out the purpose of the resolutions. The way for such treaties has been paved by the Franco-Italian treaty of April 15, 1904, whereby Italy agreed to reduce the hours of labor in manufactories and to institute an effective system of factory inspection, while France renounced the unequal treatment of Italian workmen under the French system of accidental insurance and assured better protection to Italian children in France. 'The treaty,' says Secretary Bauer, 'was negotiated by two eminent members of our Association, Messrs. Fontaine and Luzzatti — and was the direct outcome of the work of the Association, the framers having begun negotiations at the Cologne meeting in 1902.'"

American Legislation

In contrast to this epoch making movement, a continued policy of indifference to the subject in this country seems impossible. Yet the health and industrial efficiency of workingwomen has in most states been subordinated to political and legal considerations invoked by interested employers. It is true that as long ago as 1876 the Massachusetts court upheld the law of that state, forbidding employment of women between 10 p. m. and 6 a. m. But

a few years ago the admirable New Jersey law which protected women and minors in manufacture from nightwork and established a 55-hour week, was repealed. The excellent New York provision forbidding employment of all women and minors at night in factories, is, at the date of writing, attacked in the courts on the ground of constitutionality. A similar law was declared unconstitutional in Illinois in 1895, as imposing unwarranted restrictions upon the right to contract.

After that decision, women of all ages were for several years worked in Chicago during the whole night, or until any hour of the morning, in an establishment whose employees in New York City were dismissed at the legal closing hour, 10 o'clock.

If now the New York law is declared unconstitutional, the highest court of that state will again place the barren right of the individual to contract even for the hurt of herself and the community, above the beneficent power of the state to enact a far reaching health law. The Berne Conference has shown how vital to workingwomen is such a law in the eyes of civilized Europe. Is it credible that American industries are *obliged* to use up the lives of workingwomen while foreign competitors can provide this essential of health — an 11-hour night for sleep, not work? In a noble decision upholding the constitutionality of a law restricting hours of labor in mines, the Supreme Court of the United States defined (Re Holden vs. Hardy) the right of the state to abridge individual right of contract:

"But the fact that both parties are of full age, and competent to contract, does not necessarily deprive the state of the power to interfere, where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. The state still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the state must suffer."

Meanwhile it is significant that in all cases affecting the constitutionality of laws restricting hours of labor, the assailants of the law have not been laborers striving for the privilege of nightwork or unrestricted hours, but employers to whose advantage it is for them so to labor. When nightwork for women is

prohibited, employers must replace them with men (who are usually paid "time and a half" or "double time"), or must increase the day force. Either alternative means increase of expense; hence invasion of employees' "rights" are discovered by unscrupulous employers in any law prohibiting unlimited hours. But the "right" to work all day and all night, apparently assuring the individual's liberty, means in practice sheer inability to refuse to work whatever length of time the employer may choose. For refusal means dismissal. As has been well said, the "right" to work unlimited hours amounts to the "right" to lose one's job — a barren privilege![1] On the other hand when law forbids nightwork or unrestricted hours for women, industry ultimately adjusts itself to the requirement. The same specious argument is used — that "rights" are invaded — when laws against child labor are enacted. As the brief in defense of the child labor law recently attacked in California, says:[2] "There has been no cry of oppression, no contention that the rights of any citizen or of any child were invaded thereby, except such contention came from some individual from whom the law was about to exact a penalty for its violation . . . it would be with better grace if the solicitude for the invaded rights of children came from the children themselves, or their parents, or from someone who is not pecuniarily interested in the invalidity of the law under which it is sought to show the rights of children are invaded."

Laws Restricting Hours of Labor

The enlightened European countries are as far in advance of the United States in fixing by statute the length of the working day, as they are in existing or prospective laws on night work for women.

Yet a limitation of working hours is, like the prohibition of nightwork, conspicuously necessary to preserve the health of workingwomen. The enormous increase of output in manufacture which has been held a national distinction and superiority, means primarily increase in speed, with a corresponding demand

[1] See "Some Ethical Gains Through Legislation," Chap. III, Florence Kelley, and "Some Equivocal Rights of Labor," Geo. W. Alger, The Atlantic Monthly, March, 1906.

[2] Crim. Nos. 1331 and 1332, Supreme Court of California.

upon the attention and strength of the operator. The nervous strain involved in attending highly speeded modern machines can be compensated only by lessening the daily hours of application to such exacting labor.

In this country only 19 states have laws restricting hours of labor by the day and by the week.

Work Restricted by the Day and by the Week

Work Restricted to

10 hours in 24, 54 hours in one week, in California, for minors under 18 years in any place of labor.

10 hours in one day, 55 hours in one week, in Ohio, for girls under 18 years in factories and stores, or any other establishment.

10 hours in 24, 58 hours in one week, in Massachusetts and Rhode Island, for all women in manufacture.

10 hours in 24, 60 hours in one week, for New York, for all women in factories and girls between 16 and 21 years in stores; in Nebraska for all women in factories, stores, hotels and restaurants; in Connecticut, for all women in factories and stores; in Louisiana, Maine and New Hampshire, for all women in factories; in Michigan for all girls under 21 years in stores and factories; in Indiana for girls under 18 years in stores, factories, laundries, bakeries or printing offices; in New Jersey for girls under 18 years in bakeries.

12 hours in 24, 60 hours in one week, in Pennsylvania, for women in all except mine, domestic and farm labor (10 hours in 24, between Dec. 5th and 24th).

Five other states restrict the labor of women to a specified number of hours in the twenty-four, but fail to restrict labor by the week, thus inviting the twofold evil of work by night, and of work every night in the week including Sunday.

Work Restricted by the Day Only

Work Restricted to

8 hours in 24, in Colorado, for women in all employments requiring them to stand.

10 hours in 24, in Maryland, for women in cotton and woolen mills; in North Dakota, Virginia and Washington for women in all employments.

No Time Limit

Work Restricted Neither by the Day Nor by the Week

Alabama
Alaska
Arizona
Arkansas
Delaware
District of Columbia
Florida
Georgia
Hawaii
Idaho
Illinois
Indian Territory
Iowa
Kansas
Kentucky
Minnesota
Mississippi
Missouri
Montana
Nevada
New Jersey (except in bakeries)
New Mexico
North Carolina
Oklahoma
Oregon
South Carolina
Tennessee
Texas
Utah
Vermont
West Virginia
Wisconsin
Wyoming

These laws, unless reinforced by the prohibition of nightwork as in Massachusetts, Indiana, New York and Nebraska, do not limit the working hours to the daytime, and accordingly the 10 hours specified may be 10 hours at night. Indeed the statutes of Oregon and Washington expressly state that women may be employed 10 hours at *any time,* and they have in consequence been employed in Washington for almost 20 consecutive hours in a mill — a period supposedly divided into two days' labor by the convenient line of midnight.

Again, the existing statutes in five of the fourteen states exclude all adult workers from the protection of the law. California, Ohio, Michigan, Indiana and Maine legislate for girls under 18 or 21 years of age, leaving women above these ages entirely unprotected.

But it is on the ground of *sex* no less than of *age* that pro-

tection from overwork is needed. No woman of any age can toil for a 12 or 15 hour day in a laundry, for instance, involving the heaviest physical exertion, without physical injury. No woman should be employed more than 10 hours a day at less taxing employments.

Besides these general omissions, the existing laws are marred, and some made worthless by the damaging special exceptions they allow. If women are restricted to ten hours labor in one day, *except* when overtime is allowed to make one shorter work day in the week (supposedly a Saturday half-holiday), such an exception is merely a license to evade the law. Without an army of inspectors such as nowhere exists to see whether overtime is fairly compensated by off-time each week, the exception is manifestly impossible of strict enforcement. Eight states destroy the possibility of enforcing their laws by such exceptions:

California, Connecticut, Indiana, Maine, Michigan, New Hampshire, New York and Rhode Island.

Posting the Laws

Most states prescribe penalties for violation of these laws — either fines ranging from $10 to $100 for each offense, or fine and imprisonment. Many states also require that the laws be conspicuously posted in each workroom. This is a most efficient aid to enforcement, when the presence of employees on the premises after the hours posted therein, is prima facie evidence of the violation of the law. This method (especially as used in Massachusetts) saves the factory inspectors much time since they need show no other evidence of overtime employment.

Seats

Essential to the health and well being of women is the usage of sitting while at work, whenever possible. Where the nature of the occupation makes this impracticable for the whole period, much is gained if seats are provided and employees are permitted to use them at intervals, as in the "slack" times of the day for salesclerks and waitresses. Twenty-seven states and the District of Columbia have laws requiring seats for women, but few of them are so drawn or so enforced as to be of real value. The existence of the seats may easily be required, liberty to use them

as easily denied. Statutes should require employers to provide not merely "suitable seats" as most of the laws are worded, but a specified number, such as one to every worker if possible, or one to every three workers. They should be fixed seats with backs, instead of boxes and other makeshifts, permissible under many laws.

States which Require Seats

a. In all places of employment:

District of Columbia
Indiana
Minnesota
Michigan
Nebraska
Pennsylvania
West Virginia

b. In stores and factories:

Alabama (stores only)
California
Colorado
Connecticut
Iowa
Kansas (stores only)
Louisiana
Maine
Maryland (Baltimore only)
Massachusetts
Missouri
New Hampshire
New York (for waitresses also)
Ohio
Oregon
Rhode Island
South Carolina (stores only)
Tennessee (stores only)
Utah (stores only)
Washington (schools also)
Wisconsin

Toilet Facilities

Laws concerning proper and separate toilet facilities affect women working in factories, stores and all other establishments — measures demanded by mere decency, but too often unobserved, even in the 16 states where supposedly required by law.

States Which Require Separate Toilet Facilities

1. *Applies to both toilets and dressing-rooms.*

Indiana
Michigan
Minnesota
Missouri
New Jersey
New York
Ohio
Pennsylvania
Rhode Island
Tennessee
West Virginia
Wisconsin

2. *Applies to toilets only.*

California	Massachusetts
Iowa	Tennessee

Sweatshops

It has been shown that 19 states of the 52 legislate in some degree concerning women's *hours* of labor. All these laws however, besides their other omissions, fail to reach a very large and increasing number of workingwomen who labor in sweatshops or in tenement homes. Tenement industries, in the main, rest upon the home work of married women. This labor proves the chief exception to the rule which distinguishes American from foreign industry: the general absence of married women in manufacture and commerce. Our workingwomen include so large a proportion of young girls under 25 years, because in this country, women who marry after a short or long period of work, are supported by their husbands and replaced at work by a new set of young wage earners. A small percentage embracing textile workers and cigar makers continue in their trades after marriage. Conspicuous and newly arising exceptions to this rule are the stockyards, and the canneries in which married women, often with their children, are increasingly employed. The most widespread exception, however, is tenement home work.

While it is true that articles made or finished in New York tenements are sold in every state and territory of the Union, it is no less certain that such manufacture is increasing in the large and many smaller cities. The thousands of women who sew by hand or on foot power machines, making all varieties of women's and children's wear, and innumerable articles from paper bags to umbrellas and cigarettes — all labor during hours which, at seasons, end only with physical exhaustion. An investigation of homework in the small city of Newark in 1906 showed anew the evils of this system; an 18 and 20 hour day, a pittance of pay, and the wreck of all the decencies.

Moreover, the reaction of unrestricted home work upon the operation of factory laws is too often ignored. When employers are free to have work finished at home, after the legal closing hour (as is the practice in most branches of clothing manufacture, in candy making, etc.), laws restricting hours of labor are prac-

tically nullified. Factory work, transferred to the home, continues late into the night — with this difference, that the employer is saved the expense of running his establishment, and employees receive a lower wage.

Not until tenement manufacture is totally prohibited and the stream of workers turned into well ordered factories, will tenement dwellers be freed from this semi-pauper employment. Doubtless many married women who are now obliged to eke out the family income by unlimited hours of work at home, would be freed from the tyranny of the needle or machine, if the many men and unmarried women who work at tenement industries were transferred to better paying factories.

The desirability of abolishing tenement work forced upon all thoughtful observers, has not yet been embodied in the law of any state. In 1884 a law obtained by the cigar makers of New York, which forbade cigarmaking in tenements, was declared unconstitutional (Re Jacobs vs. the State of New York), and since then this decision has been held to block the way for prohibitions of tenement work. Prohibition being denied, the next best method of dealing with the problem is regulation and inspection of premises where work is carried on. Manifestly this effort is doomed to failure in so large a city as New York where in one year (1901) there were 20,000 licensed tenement homes and an unknown number of homes where work was done unlicensed. The system of subcontracting is carried on from family to family of foreigners, ignorant of our speech and laws. Without innumerable inspectors, the regulation of tenement work involves endless effort to do the impossible, to make safe by inspection what cannot be inspected, to keep homework and avoid its consequences.

In smaller communities the difficulties are the same in character, though less in extent. Many states have passed laws requiring different systems of inspection, registration of addresses to which work is given out, etc. But the effort to approximate in tenement workrooms the sanitary standards of factories has conspicuously failed. Regulation of the killing hours of labor in tenements for men, women and children has never been attempted.

Of all the sweatshop laws, that of New York is so far superior to the others that a brief statement of its essentials illustrates the best regulation yet secured.

New York Sweatshop Law

1. All tenements must be licensed in which manufacture of 32 articles specified in the law, is carried on.

2. The owner of the house must apply for the license and hang it conspicuously in the public hallway.

3. License is granted by the commissioner of labor after examination of the records of the board of health or tenement house department (if there is one) to see whether records show the presence of contagious or communicable disease or any uncomplied orders or violations. If such exist, license may be denied without visiting the premises.

4. Before license is granted the commissioner of labor must inspect the premises; and each licensed tenement house must be inspected once in 6 months to determine its sanitary condition.

5. Whenever the commissioner of labor finds an apartment habitually filthy he may prohibit manufacture therein: when he finds articles manufactured in premises where contagious disease exists, or articles in a filthy condition, he may tag them, report them to the board of health for disinfection, or destroy them.

6. The contractor or goods owner must ascertain from the commissioner of labor whether the premises into which he proposes to send goods to be manufactured are licensed; he must keep a register of the names and addresses plainly written in English, of the persons to whom articles are sent and produce this register for the inspection of the commissioner of labor.

7. The home worker must not take work into an unlicensed tenement, and must keep clean the room or apartment in which work is done. He must not allow others than members of his family to work in his rooms.

Dangerous Occupations

If tenement manufacture is still uncontrolled, the so-called "dangerous trades" have not been even investigated, much less restricted by law, in this country. It is true that public opinion has declared against employment of women in certain occupations conspicuously dangerous to health or morals, such as mines and barrooms, and many states consequently prohibit their employment in these occupations. In a few states women are prohibited

from buffing or polishing metals. But the injurious effects of trades involving the use of poisons, gases, atmospheric extremes or other dangerous processes — such as have been carefully studied and restricted by legislation abroad — have received no attention here.

In conspicuous contrast to the meagre array of laws restricting *women's* labor, shown in this brief compilation, is the growing movement for an 8-hour day for men employed in mines or on public works. Five western states, Arizona, Colorado, Montana, Missouri and Utah prohibit employment of men in mines more than 8 hours in one day; 18 states restrict to 8 or 10 hours in one day all labor on public works. Moreover, unlike the laws restricting women's hours — reversed in Illinois, threatened in New York — these are powerful statutes, sustained by public opinion and court review. The Supreme Court at Washington has upheld as constitutional, state laws restricting men's hours of labor in mines, and state laws restricting their hours of labor on public works. (Re Atkins vs. The People, and Holden vs. Hardy). On the other hand when the New York law fixing an 8-hour day for all labor contracted for by the state, was declared in conflict with the state constitution, it was found entirely feasible to change the state constitution to fit the law. An amendment to the constitution, specifically authorizing the legislature to fix hours of labor on public works was submitted to the electors in November, 1905, and carried by a large vote.

Thus have men's hours of labor been restricted, because authoritatively demanded by the voters themselves, usually at the instigation of the unions. But in the same state where men work no more than 8 hours in mines or on public contracts, little girls from fourteen or sixteen years upwards may be employed 10 or even 12 hours in each day. Women do not profit by the 8-hour laws for men, since they labor neither in mines nor on public works. They have neither unions nor votes to enforce a demand for shorter hours. So young and so ignorant, in the main, are they, that they cannot even voice a coherent demand for their needs and rights. The trade agreement has in some instances shortened their hours of labor, but it has remained for philanthropists, in most states, to secure legislation in their behalf. Only the state, through laws, can protect its weaker laborers, and hither-

to such protection has been almost wholly lacking. To enforce the few beneficent statutes prohibiting night work and fixing hours of labor for women in states where such laws exist, and to obtain and enforce similar laws in other states — is a task imperiously demanded by the ever widening employment of women and the influence of their unregulated employment upon the nation's life.